



Billing Code: 9110-9P-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 27

[DHS-2014-0016]

Chemical Facility Anti-Terrorism Standards (CFATS) Appendix A

AGENCY: National Protection and Programs Directorate, Department of Homeland Security.

ACTION: Notice of public meeting.

SUMMARY: The Department of Homeland Security (DHS or the Department) invites public comment on the Appendix A Chemicals of Interest (COI) list. These comments may be used for potential revisions to the Chemical Facility Anti-Terrorism Standards (CFATS) regulations.

DATES: A roundtable discussion will be held from 8:30 a.m. to 12:00 p.m. followed by a listening session from 1:00 p.m. to 4:00 p.m. on Tuesday, October 27, 2015. Written comments must be submitted on or before Monday, November 30, 2015.

ADDRESSES: The roundtable discussion and public listening session will be held at:

- The National Training Center, 1310 North Courthouse Road, Suite 600, Arlington, VA 22201.

You may submit comments, identified by docket number DHS-2014-0016. To avoid duplication, please use only one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* U.S. Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division, 245 Murray Lane, Mail Stop 0610, Arlington, VA 20528-0610.
- *In person:* Verbal comments are acceptable in person at the public listening session.

Registration to Attend and/or to Participate: If you wish to attend the roundtable discussion and public listening session and/or make an oral comment at the listening session, please register at <http://www.cvent.com/d/8rqbsg/4W>. If you cannot attend in person you may register to participate in a listen-only webinar. Comments will not be accepted during the webinar. Attendees of the webinar may submit written comments using the methods identified in this section. Please note that the morning portion will consist of a technical, roundtable discussion and the afternoon portion will consist of a listening session. There is no fee to register for either session. Same-day registration is permitted but seating will only be on a space-available basis, beginning at 7:30 a.m. We will do our best to accommodate all persons who wish to make a comment during the listening session. DHS encourages persons and groups having similar interests to consolidate their information for presentation through a single representative.

FOR FURTHER INFORMATION CONTACT: Jon MacLaren, Rulemaking Section Chief, Office of Infrastructure Protection, Infrastructure Security Compliance Division, 245 Murray Lane, Mail Stop 0610, Washington, DC 20528-0610, Telephone 703-235-5263. For additional information on the Appendix A meeting, please email

CFATS@hq.dhs.gov. Individuals with access and functional needs wishing to attend the session and require accommodations should contact Sharmine Jones at Sharmine.Jones@hq.dhs.gov as soon as possible.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

ASP - Alternative Security Program

CAS – Chemical Abstract Service

CFATS – Chemical Facility Anti-Terrorism Standards

CFR – Code of Federal Regulations

COI – Chemicals of Interest

CSAT – Chemical Security Assessment Tool

CVI – Chemical-terrorism Vulnerability Information

DHS or Department – Department of Homeland Security

FR – Federal Register

SSP – Site Security Plan

STQ – Screening Threshold Quantity

SVA - Security Vulnerability Assessment

I. Background

Section 550 of the Department of Homeland Security Appropriations Act of 2007 (Pub. L. 109-295) authorized the Department to regulate the security of chemical facilities that, in the discretion of the Secretary, may present high levels of security risk. Under the Section 550 authority, on April 9, 2007, DHS issued the CFATS interim final rule, 6 CFR Part 27. See 72 FR 17688. Additionally, in November 2007, the Department

adopted as Appendix A to the CFATS rule, a final list of over 300 Chemicals of Interest (COI) that pose significant risks to human life or health if released, stolen or diverted, or sabotaged or contaminated. DHS also adopted some additional provisions that clarify how Appendix A is to be applied under CFATS. See 72 FR 65396. Publication of the Appendix A regulations brought the CFATS interim final rule into full effect.

On December 18, 2014, the President signed into law the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, (“the Act”) (Pub. L. 113-254 (6 U.S.C. §§ 621 et seq.), which authorizes the CFATS program. The Act supersedes Section 550 of the Department of Homeland Security Appropriations Act of 2007, Pub. L. 109-295, as amended, under which the CFATS program was originally established in April 2007. The CFATS regulations, 6 C.F.R. Part 27, remain in effect. Under CFATS, any chemical facility (other than certain facilities expressly exempted by statute) that possesses any COI at or above the threshold amounts (applicable Screening Threshold Quantity (STQ) or minimum concentration) specified in Appendix A for that COI must complete and submit to DHS through the Chemical Security Assessment Tool (CSAT)¹ certain information (the “Top-Screen”).

II. Scope of Roundtable Discussion and Listening Session

DHS is interested in obtaining information and recommendations from the public on Appendix A. Comments and recommendations are welcomed on all aspects of CFATS Appendix A; however, DHS is particularly interested in hearing about the following topics:

¹ CSAT is an information technology system primarily designed to collect facility information through specific applications for submitting Top-Screens, Security Vulnerability Assessments (SVAs), Site Security Plans (SSPs), and Alternative Security Programs (ASPs). See 6 CFR 27.105.

- The possible addition of chemicals to, and/or the deletion or modification of COI currently listed in Appendix A;
- The applicability and/or modification of any Screening Threshold Quantities (STQ) or minimum concentrations;
- Concentration and mixtures rules associated with Appendix A, which are described in 6 CFR § 27.204;
- Isotopic variants to include comments on Chemical Abstract Service (CAS) Registry Numbers and nomenclature;
- The classification of COI within different security issues, to include the potential for re-designating certain chemicals now listed solely as release flammable so they are listed solely as toxic or as toxic and flammable; and
- Criteria for “counting rules” for screening threshold quantities to include clarification on how to determine if a COI is in transportation.

III. Written Comments

A. General

All interested persons, even those who are unable to attend the roundtable discussion and/or public listening session in-person, may submit written comments, data, or views on how Appendix A of the current CFATS regulations, 6 CFR part 27, might be improved. Please explain the reason for any comments and include other information or authority that supports such comments. Feedback that simply states that a stakeholder feels strongly that DHS should modify the Appendix A COI list will not enable the Department to adequately evaluate the commenter’s concern, nor could DHS propose possible changes to address the commenter’s feedback. Therefore the Department

requests that commenters provide actionable data, including how the proposed change would impact the costs and benefits of CFATS, to allow the Department to fully consider the commenter's comment and recommendation.

Written comments may be submitted electronically or by mail, as explained previously in the **ADDRESSES** section of this Notice. To avoid duplication, please use only one of these methods to submit written comments. Written comments will not be accepted at this public meeting.

Except as provided below, all comments received, as well as pertinent background documents, will be posted without change to <http://www.regulations.gov>, including any personal information provided. All submissions must include the agency name and docket number for this rulemaking. For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

B. Handling of Confidential, Sensitive and Chemical-terrorism Vulnerability Information

Interested parties are encouraged to submit comments in a manner that avoids discussion of trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI), or any other category of sensitive information that should not be disclosed to the general public. If it is not possible to avoid such discussion, however, please specifically identify any confidential or sensitive information contained in the comments with appropriate warning language (e.g., any CVI must be marked and handled in accordance with the requirements of 6 CFR 27.400(f)), and submit them by mail to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section.

DHS will not place any identifiable confidential or sensitive comments in the public docket; rather, DHS will handle them in accordance with applicable safeguards and restrictions on access. See e.g., 6 CFR 27.400. See also the DHS CVI Procedural Manual, “Safeguarding Information Designated as CVI,” September 2008, located on the DHS web site at: www.dhs.gov/critical-infrastructure-chemical-security. DHS will hold any such comments in a separate file to which the public does not have access and place a note in the public docket that DHS has received such materials from the commenter. DHS will provide appropriate access to such comments upon request to individuals who meet the applicable legal requirements for access to such information.

IV. Roundtable Discussion and Listening Session

A. Purpose

The Department will hold a public roundtable discussion and listening session to solicit the public’s views and recommendations on how the current Appendix A COI list might be improved.

B. Procedures and Participation

This meeting is open to the public. DHS will use sign-in sheets to voluntarily collect contact information from the attending public and to properly log oral comments received during the two sessions. Providing contact information will be voluntary, and members of the public also may make anonymous oral comments. Seating may be limited, but session organizers will make every effort to accommodate all participants. Please note that members of the public who participate through the listen-only webinar may log in as a guest on the Homeland Security Information Network. This log in does not require your full name or a password. As previously stated, comments will not be

accepted through the webinar. If you wish to submit a written comment please submit through the methods identified in the **ADDRESSES** section. The roundtable discussion is intended for technical experts, who have a scientific, security, regulatory or other background to discuss the proposed topics regarding Appendix A at an expert level. However, individuals who are not technical experts (or who do not meet the other criteria) may still attend and participate in the meeting. The listening session is intended to afford the public an opportunity to provide comments to the Department concerning CFATS and the Appendix A. For the listening session, comments are requested not to exceed four minutes at a time to enable all interested attendees an opportunity to provide comment. Should time permit, commenters who need additional time may be invited to complete their comments. The listening session may adjourn early if all commenters present have had the opportunity to speak prior to the scheduled conclusion of the session. Participants who speak will be asked to provide their name, title, company and stakeholder segment (i.e. chemical producers, chemical storage companies, agricultural supply companies, state and local regulators, chemical critical infrastructure owners and operators, etc.). Notes from the listening session will be posted at <http://www.regulations.gov>. The public roundtable discussion and listening session also may be recorded to support the note-taking effort.

DHS will place a transcript of the public meeting in the docket for this rulemaking.

In addressing these topics, DHS encourages interested parties to provide specific data that documents the costs, burdens, and benefits of the current regulatory approach. Commenters also might address how DHS can best obtain and consider accurate,

objective information and data about the costs, burdens, and benefits of Appendix A, and whether there are lower cost alternatives that would to allow the Department to continue to achieve its security goals consistent with the law.

David M. Wulf,
Director for Infrastructure Security Compliance Division,
Department of Homeland Security.

[FR Doc. 2015-26200 Filed: 10/15/2015 08:45 am; Publication Date: 10/16/2015]